

## **GERMAN INSULT LAW SUBJECTS CERTAIN SPEECH AND GESTURES TO PUNISHMENT**

**Grafenwoehr Law Center**—Americans should be aware that verbal insults and offensive gestures are punishable under German law to a much greater extent than in the United States. What an American may consider mere name-calling or a harmless, albeit rude, gesture to another motorist may lead to civil lawsuit or even criminal prosecution in Germany.

German law applies to Americans residing in Germany, regardless of whether they are members of the United States forces. American soldiers, civilian employees of the U.S. government, contractors, and members of their families do not necessarily enjoy immunity from prosecution under German law.

Insult, defined by the German Supreme Court as “intentionally attacking the honor of another person by communicating disrespect,” is punishable by a fine and up to two years in prison under Section 185 of the German Criminal Code. But what is an actionable insult under German law? Racial epithets, profane or obscene name-calling, and certain well-known physical gestures are all prohibited. Furthermore, some insulting statements are punishable even when true.

For example, an exasperated American driver who overtakes a slower motorist and who taps his forehead in derision as he passes has violated German law. Not only is he subject to punishment for the insulting behavior, he may also have points assessed against his USAREUR driver’s license or even suffer suspension of his license.

Calling a policeman a “pig,” likening the Polizei with whom one is speaking to the Gestapo, and calling another a Nazi, a Hun, etc., apart from being poorly calculated to win the addressee’s favor, violate the law. The imputation of unchastity to a woman, and referring in writing to a lady but using quotation marks around that word, are also unlawful. In general, using disrespectful or insulting language beyond what is needful to convey a thought falls within the ambit of the law.

While the German law is very broad, it does not forbid all objectionable or unpleasant communications. When certain “justified interests” are the subject of argument, the law does not apply, so that heated language employed in a political debate is not punishable. Criticizing the shortcomings of another is not unlawful so long as measured language is employed. Further, the courts are likely to refrain from punishing either party in cases of reciprocal insults.

Even when the victim of an insult files a criminal complaint with the prosecutor, the case will not automatically go to trial. Often the prosecutor will dismiss the case, but only after the accused has made a contribution to a charity or other social organization. The insulted person always has a cause of action in civil court for pain and suffering, whether or not the prosecutor pursues the case in criminal court. Money judgments

assessed against the defendant in such cases are routinely in the area of 1,000 euros, but of course may be much higher depending upon the nature of the insult.

Defamation, the communication of injurious or untrue statements, is also unlawful in Germany. An injurious statement is considered defamatory unless the speaker can prove that it is true. Thus a soldier who tells another person "John Doe stole a laptop from the supply room" has damaged John Doe's reputation. The speaker would have to prove to a court that John Doe did in fact steal the computer. Neither the court nor the police is responsible for investigating the truth or falsity of the statement.